

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

_____)	
In the Matter of)	Docket OST-97-2881
)	97-3014
Computer Reservations System (CRS))	98-4775
Regulations; Statements of General Policy)	99-5888
_____)	

**ANSWER OF UNITED AIR LINES, INC.
TO PETITION FOR EXTENSION OF DEADLINES FOR SUBMISSION OF
COMMENTS AND FOR EXTENSION OF CRS RULES SUNSET DATE**

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DATED: November 27, 2002

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United Air Lines, Inc. ("United") submits the following answer to the petition filed November 22, 2002 by a group comprised primarily of three of the four major CRS vendors and various travel agent interests requesting an extension of 1) the deadlines for commenting on the Department's Notice of Proposed Rulemaking dated November 15, 2002 ("NPRM")^{1/} and 2) the March 31, 2003 sunset date applicable to the Department's current rules governing computer reservations systems, 14 C.F.R. Part 255.

United does not object to a limited extension of the comment deadlines, but strongly opposes any extension of the March 31, 2003 sunset date. In support of this answer, United submits the following:

1. On March 28, 2002, the Department extended for the fifth time the sunset or expiration date of the current CRS rules, from March 31, 2002 to March 31, 2003. 67 Fed. Reg. 14846. In doing so, the Department intended to afford itself sufficient time in which to finalize its ongoing, protracted reexamination of the rules (Docket OST-97-

^{1/} 67 Fed. Reg. 69366.

2881). On November 15, 2002, the Department issued the NPRM and established a deadline of January 14, 2003 for initial comments and February 13, 2003 for reply comments. Petitioners request that the Department extend the 60-day initial comment period to 120 days and the subsequent 30-day reply comment period to 60 days, thereby establishing a new initial comment deadline of March 16, 2003, while reply comments would be due on May 15, 2003 -- approximately six weeks after the CRS rules are due to expire. Petitioners also request that the Department extend the March 31, 2003 sunset date by six months to preserve the status quo while this proceeding would continue on the deferred schedule they propose. Petitioners urge the Department to act on their requests by December 3, 2002.

2. The Department, in the NPRM, while contemplating the possible elimination of the current CRS rules, has proposed important changes to those rules, including proposals to eliminate specific provisions because they effectively insulate CRS vendors from competition, thereby indirectly imposing an excessive cost burden on the nation's airlines and their passengers. In particular, the Department has proposed to eliminate the mandatory participation rule, which requires that any carrier deemed a "system owner" participate in each system at the same level, and the non-discriminatory booking fee rule, which compels CRS vendors to charge uniform booking fees to all

carriers that participate at a particular level of service.^{2/} The Department, evidently mindful of the March 31, 2003 sunset date, established a schedule for the submission of comments on the NPRM that affords the opportunity to finalize the review process before the current rules expire. United supports, and urges the Department to accomplish, that objective.

3. Petitioners' identity and particular interests may explain why they do not share that sense of urgency. In addition to various travel agent interests, Petitioners include three of the four CRS vendors -- Sabre, Galileo, and Amadeus -- which the current rules effectively insulate from market forces.^{3/} If the Department decides to terminate the rules or modify them to eliminate the mandatory participation, non-discriminatory booking fee, and other anti-competitive rules, it will afford carriers greater freedom to choose among the services offered by the various CRS systems and negotiate the terms of their participation. Faced with that unsavory prospect, it is not surprising

^{2/} 14 C.F.R. §§ 255.6, 255.7. The latter rule discourages the CRS vendors from negotiating with participating carriers about the terms of participation because the rules require that the vendors offer the same terms to each carrier. This requirement facilitates the vendors' ability to increase the price of CRS distribution services to participating carriers without fear of loss of participation, increasing the pressure on carriers to pass inflated CRS costs through to passengers in the form of higher fares. Under the current rules, participating carriers have no option but to accept the vendors' well-documented, successive and substantial fee increases, reduce their level of participation or sever their ties with the CRS systems altogether.

^{3/} Worldspan has not joined the petition. Unlike the other vendors, Worldspan has advocated a two-year suspension of the effectiveness of the current rules to determine "whether the rules are still needed . . . [and to] eliminate the anomalies allegedly now created by the rules." 67 Fed. Reg. 14846, 14848 (March 28, 2002). In fact, some of the petitioners (despite their support for a further extension of the sunset date on this occasion) also have recognized the merits of suspending at least a selective portion of the rules without waiting for this proceeding to be finalized. The American Society of Travel Agents ("ASTA") and the National Business Travel Association ("NBTA"), among others, recently urged the Department immediately to suspend or amend section 255.10(a) of the current rules, which "requires each system to make available to all participating airlines any data that it chooses to generate from the bookings made by travel agents." *Id.* at 14848, 14851. In sum, at least one CRS vendor and several of the petitioners themselves are not opposed in principle to suspension or termination of some or all of the current rules.

that some CRS vendors wish to delay finalization of this proceeding and instead perpetuate the status quo, which protects their own parochial business interests; in fact, several of the petitioners are on record as having supported the Department's most recent extension of the current rules' sunset date.^{4/}

4. Petitioners argue that they need more time to develop their response to the NPRM. They claim that the NPRM's length, the number and alleged complexity of the issues it addresses, and the allegedly "radical" nature of some of the changes proposed by the Department make preparation of such a response a "monumental job."^{5/} In fact, none of the NPRM's proposed changes, including the rules' potential elimination, is "radical"; the issues addressed in the NPRM are fundamentally the same ones that have been under debate since the inception of this proceeding. Petitioners and other interested parties do not need more time in which to divine their positions on these issues. The Department initiated this review proceeding more than five years ago and has extended the sunset date five times since then. In the interim, interested parties have had the opportunity to submit comments to the Department on multiple occasions, including in response to the Department's September 10, 1997 Advanced Notice of Proposed Rulemaking, its July 4,

^{4/} See 67 Fed. Reg. 14846, 14848 (March 28, 2002) (citing Amadeus, ASTA, and NBTA, among others, as supporting the Department's most recent extension of the sunset date). Petitioners' proposed delay of this proceeding reflects their desire to perpetuate the regulatory status quo for as long as possible. In essence, Petitioners' message is "preserve the existing rules, but if you intend to change them, take as long as possible to do so." The continued support of three CRS vendors for government regulations that restrict their business practices is testament to the anti-competitive nature of the current rules and the parochial nature of the interests raised in the instant petition.

^{5/} Petition, at 3, 8. Petitioners reveal their prejudice for the status quo by pejoratively characterizing unspecified aspects of the Department's proposals as "radical changes." Id. at 8. In fact, the more "radical" option would be to extend the current rules regardless of evidence reflected in the NPRM that they are anti-competitive and therefore contrary to the public interest.

2000 request for supplementary comments, and its five successive proposals to extend the sunset date.^{6/}

The Department has endured substantial criticism for delay in finalizing this proceeding. The recently-issued report of the National Commission to Ensure Consumer Information and Choice in the Airline Industry “urges DOT to complete its rulemaking without further delay.”^{7/} The Commission was sufficiently concerned about such delay that it recommended that the Department be subject to a regular congressional reporting requirement:

[T]he Commission believes that DOT should be required to review distribution issues more frequently than has occurred in the past. DOT’s current CRS review began in 1997 and, during the intervening period, has been extended five times. To make the Department more responsive, Congress should require that DOT report to it every two years on the state of the travel agency and online distribution systems.

Id. at 63.

The current rules have been in effect since 1992 and are obsolete. As the Department recognized in the NPRM, the industry has undergone significant changes

^{6/} In addition, interested parties, including some of the petitioners, have presented their views in testimony before congressional committees, to the Office of Management and Budget and the National Commission to Ensure Consumer Information and Choice in the Airline Industry.

^{7/} *Upheaval in Travel Distribution: Impact on Consumers and Travel Agents, Report to Congress and the President by the National Commission to Ensure Consumer Information and Choice in the Airline Industry*, November 13, 2002, at 61. Congress, as part of AIR-21, created the Commission to investigate and report on “first, the current state of the travel agent industry, and the impact of changes in the industry on consumers; and, second, the potential for impediments to distribution of information to cause injury to agencies and consumers.” Id. at 1.

over the past decade^{8/} -- changes that were never contemplated or accounted for in the current rules.^{9/} The publication of the NPRM and the comment schedule established therein presents an opportunity for the Department to depart from the chronic delays of the past and expedite finalization of this proceeding before the rules expire.

5. As stated above, the Department should reject Petitioners' request for further delay at this critical juncture in the proceeding. If, however, the Department were to be persuaded that interested parties need more time to comment on the NPRM, that would not justify a further extension of the current rules' sunset date. Even before it issued the NPRM, the Department anticipated that the fifth and current extension should be the last.^{10/} Now, in light of the NPRM, there is no reasonable basis for further extension of the rules. The NPRM, and in particular the Department's reasons for adopting specific proposals to eliminate the mandatory participation and non-

^{8/} See 67 Fed. Reg. 69366, 69372-73 (noting "two major developments in the CRS business and airline distribution that have occurred in recent years, the airlines' shrinking ownership of the systems and the growth of Internet usage").

^{9/} The current rules, as finalized by the Department in 1992, contained a December 31, 1997 sunset date, but have remained in effect without subsequent review for more than 10 years, or twice as long as originally intended. In 1991, the Department cautioned that it might need to review the rules before December 31, 1997 "[i]f technological developments make an earlier review or amendment of the rules advisable." 56 Fed. Reg. 12586, 12627 (March 26, 1991). In fact, the Department, even before it issued the NPRM, acknowledged that technological and other developments, including changes in CRS system ownership and "[t]he Internet's role in airline distribution[, which] is growing rapidly" (67 Fed. Reg. 7100, 7103), have transformed the CRS industry; those developments have rendered the near-decade-old "current" rules not merely obsolete, but adverse to the public interest.

^{10/} 67 Fed. Reg. 14846, 14847 (March 28, 2002) ("[t]his extension of the current rules will keep them in effect while the Department carries out its reexamination of the need for CRS regulations"); see also id. at 14849 (noting that comments received "underscore the need to complete our review of the rules promptly"). The Department reaffirmed its resolve on this point in the NPRM. 67 Fed. Reg. 69366, 69367 (November 15, 2002). Secretary Mineta also recently stated that he has "personally committed to move forward with a review of the existing [CRS] rules, and ha[s] made the completion of this rulemaking proceeding a departmental priority." *Letter of DOT Secretary Norman Y. Mineta to the Hon. James L. Oberstar, Democratic Ranking Member, Committee on Transportation and Infrastructure, U.S. House of Representatives, dated November 5, 2002*, at 1 (placed in Docket OST-97-2881 on November 6, 2002).

discriminatory booking fee rules, underscore that the current rules have anti-competitive effects that cannot be allowed to persist.^{11/}

Petitioners argue that the Department should extend the sunset date so that the travel distribution industry will know that the existing “‘rules of the game’ . . . are going to remain in place through at least next September and, presumably, for some appropriate transition period thereafter should the Rules be modified.” Petition, at 8. Businesses’ alleged need for “such certainty for planning purposes,” however, cannot justify perpetuating an anti-competitive regulatory regime. Any limited “uncertainty” that elimination or modification of the current rules may create would be outweighed by the benefits to airlines and consumers of such necessary, and ultimately inevitable, deregulation. In fact, the only “certainty” about Petitioners’ proposed delays is that airlines would continue to pay artificially-inflated fees for levels of CRS system participation that exceed their needs, thereby perpetuating the undue cost burden imposed on the airlines and the traveling public under the current rules.

If the Department has not finalized this proceeding by March 31, 2003 or if it decides to grant Petitioners’ request for extension of the comment deadlines, the Department should allow the CRS rules to lapse as scheduled. Thereafter, if the Department believes that an air carrier or ticket agent has engaged in unfair and deceptive

^{11/} Petitioners suggest that the NPRM reveals the Department’s “uncertainty” and “ambivalence” about how to proceed on many of the issues addressed in the NPRM and such lack of decisiveness warrants further delay. Petition, at 6. Petitioners misconstrue the Department’s adherence to administrative due process principles as a basis for delay. In fact, the NPRM reflects the Department’s responsibility to set forth proposals and raise issues for public comment while keeping an open mind about the outcome, as opposed to eschewing “uncertainty” and “ambivalence” by going through the motions of notice-and-comment before finalizing by rubber stamp a pre-determined outcome.

practices or unfair methods of competition, the Department will continue to have ample authority under Section 411 (49 U.S.C. § 41712) to take action against such abuses on an ad hoc basis. In short, if the current rules lapse, there will be no risk to competition or consumers, but if the rules were to be extended, it would perpetuate their anti-competitive and anti-consumer effects.

It would be a serious mistake for the Department to extend the current rules' applicability to serve the parochial interests of CRS vendors and others which benefit from the anti-competitive status quo, based on nothing more than the pretextual notion that those parties need more than three months in which to prepare written comments on the NPRM. Such an extension would send the wrong message to the industry, Congress and the public that the Department, rather than expediting a resolution of this proceeding, is capitulating to pressure for further delay.

6. In any event, Petitioners fail to acknowledge that extension of the sunset date would require the Department to institute a rulemaking proceeding to amend section 255.12 of the current rules -- as it has done on five previous occasions.^{12/} The Department would be required to publish a notice of proposed rulemaking and afford interested parties an opportunity to comment before issuing a final order implementing


^{12/} See 67 Fed. Reg. 7100 (February 15, 2002) (Docket OST-02-11577); 66 Fed. Reg. 17352 (March 30, 2001) (Docket OST-01-9054); 65 Fed. Reg. 16808 (March 30, 2000) (Docket OST-00-6984); 64 Fed. Reg. 15127 (March 30, 1999) (Docket OST-99-5132); 62 Fed. Reg. 66272 (December 18, 1997) (Docket OST-97-3057).

any such extension. In short, the Department is not authorized to grant Petitioners the relief they seek from applicability of the March 31, 2003 sunset date.

7. Petitioners imply that the Department's procedural schedule reflects a rush to judgment; they assert the need "to move forward with this proceeding in a more considered manner." Petition, at 5 (emphasis added). By any reasonable measure, however, five years is consideration enough. The time has come to finalize this proceeding, and the comment schedule established in the NPRM will afford all interested parties sufficient time in which to gather and present relevant evidence and communicate their views to the Department.

In summary, United supports the Department's efforts to finalize this proceeding without further delay. Although United does not agree that interested parties need more time to submit comments, United would not oppose a limited extension of the comment deadlines established in the NPRM. United, however, strongly opposes any extension of the March 31, 2003 sunset date.

Respectfully submitted,


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Dated: November 27, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Answer of United Air Lines, Inc. on all persons named on the attached Service List by causing a copy to be sent via email and/or first-class mail, postage pre-paid.


Kathryn D. North

DATED: November 27, 2002

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